

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7858 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GIRJABEN WIDOW OF NARAN

JERAMBHAI

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR SR DIVETIYA ADD. GOVERNMENT PLEADER

for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 05/02/98

ORAL JUDGEMENT

The Police Commissioner, Surat City passed the order of detention under Sec. 3(2) of the Prevention of Anti-Social Activities Act (for short " the Act") and detained the petitioner. By this application, the petitioner calls in question the legality and validity of the order of detention.

2. Against the petitioner about 8 cases under the Bombay Prohibition Act came to be filed with different Police Stations viz. (1) Athawa Lines Police Station and First T.F.City of Surat. Some times, the petitioner was found in possession of certain quantity of liquor ranging from 10 liters to 305 liters. He was dealing in liquor and was selling and providing to different persons and therefore, the public life was considerably affected and as he was playing mischief with public at large, the Commissioner of Police, Surat City, found that the public order was being disturbed, because whoever came in the way of the petitioner was dealing with him wildly. He was beating, torturing, molesting and making him to bend in his way. Because of his such activities, no one was ready to come forward or to make statement against him. As every one was apprehending danger to his safety, after great persuasion and assurance that necessary particulars disclosing their identity would be withheld and would not be disclosed, the Commissioner of Police found that nefarious activities of the petitioner is going brucine and the petitioner was required to be lawfully come down upon different sources available in law were avoided and so as to curb the activities of the petitioner, but the general law was sounding dull and the only way found just and proper for the Police Commissioner was to pass the order of detention and detain the petitioner for certain times. He, therefore, passed the impugned order, consequent upon which the petitioner is at present under detention.

3. The learned advocate representing the petitioner has on three to four grounds challenged the order but when a query was made, he tapered down his submission to only point namely the public order. According to her, by aforesaid four complaints lodged against the petitioner, the public order would never be disturbed and those cases can well be dealt with under the general law. Mr. U.R.Bhatt, the learned APP has supported the order submitting that no illegality has been committed and every thing has been done quite in consonance with the law in all respect before passing the order.

4. When both have confined to the only point about the public order being disturbed, I will fine to the said ground going to the root of the case. It may be stated that the Supreme Court has made clear on the point. In the case of Piyush Kantilal Mehta Versus Commissioner of Police, Surat City and Another, AIR 1989 SC 491, it is observed that even if the detenu is held to be prohibition bootlegger, indulging in use of force and

violance and by illegal sale of liquor, the detenu created an atmosphere of fear and terror by beating innocent persons, and because of such minor incident or activities said to create insecurity or panic in general public, the detention cannot be held proper and just. In that case, the order of detention was quashed and set aside. Following that decision, this court has also taken the same view in the case of Amrat Rambhai Vaghari Versus Commissioner of Police Ahmedabad and others, 1995(2) G.L.H. 874.

5. In this case, on the basis of the aforesaid eight cases, it is sought to be expressed that by his bootlegging activities, the public order was being disturbed. Because, at times, the petitioner was harassing the people, causing them to bend his way and those who resisted, were beaten or even molested. Reading order, it appears that he may be viewed of such cases and as made clear by the Supreme Court in the aforesaid decision, some of the isolated minor incident cannot be made the base to hold that the same would create insecurity and panic in general. Consequently the detention order cannot be maintained. The same is required to be quashed.

6. In the result, the application is allowed. The order of detention dt. 30th September, 1997 is hereby quashed and set aside and the petitioner-detenu is ordered to be set at liberty forth with, if no longer required in any other case. Rule accordingly made absolute.

(ccs)